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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/523,210  
Filing Date: January 27, 2005  
Appellant(s): GRIES, ULRICH

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Daniel E. Sragow  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed October 3<sup>rd</sup> 2008 appealing from the Office action mailed January 28<sup>th</sup> 2008.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2002/0026540	Smyers	2-2002
6,404,533 B1	Fergusson	6-2002
5,434,860 B1	Riddle	7-1995

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4, 6-8 and 11 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Smyers US2002/0026540 A1.

Regarding claim 1, Smyers discloses “a bus structured network” as an IEEE 1394-1995 serial bus network (pg. 2 paragraph 13, Fig. 2), “issuing a first control communication from said first device to a first at least one of said plurality of second devices by means of an asynchronous data communication” as non-realtime control communications (pg. 3 paragraph 14), and “issuing real-time data communication ... by means of an isochronous data communication” as a stream of data transmitted on an isochronous channel (pg. 3 paragraph 14), and “issuing a second control communication ... said second control communication being included in said isochronous data communication” as a control communications that includes a real-time

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component, which means the control communication is sent over the isochronous data pipe (paragraphs 23, 34-35, 37), and “a first control command ... for controlling a functionality having an effect directly recognizable by a user if said first control command is not timely executed” as sending a control signal that if not timely received will cause data to be lost (paragraph 34 – this will be directly recognizable by the user at a later time when attempting to view the program), or sending a control command for playback which would be instantly recognizable by the user whether the command timely executed (paragraph 51).

Regarding claim 4, Smyers discloses “control command is sent in a repeated manner” as a control communication that is continuously sent (pg. 5 paragraph 34).

Regarding claim 6, Smyers discloses “first control communication to said first at least one second device” as a device that issues control commands, such as a VCR (pg. 4 paragraph 26), “communicating said second control command to a second at least one of said plurality of second devices” as AVHDDs communicating commands (paragraph 33), and “by means of isochronous data communication” as devices that transmit control communications among themselves using isochronous communication (pg. 4 paragraph 23, pg. 5 paragraph 34).

Regarding claim 7, Smyers discloses “a network station for performing [the method according to claim 1]” as the components of Smyers perform the method of

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claim 1 (Fig. 2, pg. 3 paragraph 14), “an interface to the network” as an interface circuit (paragraph 28), “means for performing said asynchronous [and isochronous] data communication” as the system sends both asynchronous and isochronous communication (pg. 5 paragraph 34), and “using said isochronous data communication to communicate said second control communication” as isochronous control communications (pg. 4 paragraph 23, 34, 37).

Regarding claim 8, Smyers discloses “transmitting said first control command onto an isochronous channel” as sending control information on an isochronous channel (pg. 4 paragraph 23).

Regarding claim 11, Smyers discloses “wherein the network interface is an IEEE-1394-network interface” as a IEEE 1394-1995 network interface (pg. 4 paragraph 23, Fig. 1, 2).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smyers in view of Fergusson U.S. Pat. 6,404,533 B1.

Regarding claim 3, Smyers does not disclose “said first control command is configured to control one of [...] and a visible parameter for at least one display” however Fergusson teaches using an isochronous signal to communicate video control data (col. 5 ln. 18-35).

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Smyers with the video control feature of Fergusson. The motivation to combine is simply to use the isochronous communication for a broader range of control communication since Smyers teaches that control commands can successfully be transferred using isochronous communication and Fergusson teaches that one type of control command is to control video.

Regarding claim 10, it corresponds to claim 3 and is therefore rejected for the same reasons.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smyers in view of Riddle U.S. Pat. 5,434,860 B1.

Regarding claim 5, Smyers does not disclose “detecting a disturbance on the communication network, determining a degree of said disturbance, and reducing a use of said isochronous data communication” however this is taught by Riddle as a system

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that limits real-time communication whenever reduced network performance is detected (col. 2 ln. 10-16, 43-53).

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify Smyers with the real-time traffic reduction feature of Riddle. The motivation is to maintain network performance by reducing traffic.

#### **(10) Response to Argument**

##### **35 USC 102**

Applicant argues that Smyers does not disclose a second control communication is included in the isochronous data communication as recited by claim 1. To evaluate this argument it must first be understood what the terms "communication" and "included" mean. Looking to the specification there is no explicit definition of either term. The specification does discuss data streams and individual data packets, so giving the term "communication" it's broadest reasonable interpretation in light of the specification would have to include both a single packet (i.e. message) and a stream of messages. With this definition it can now be determined what it means to say a control communication is "included" in the isochronous data communication. Since the term communication can be a stream of messages, then to include something in the communication would only require that it is part of that stream. Thus the claim merely



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requires that there is a stream of data messages (communication) and that a control message is part of the stream.

Smyers teaches a data pipe which transmits isochronous data and isochronous control signals (paragraph 34). Smyers also discloses that control signals can be sent during the transmission of data streams (paragraph 37). This disclosure of simultaneously sending data and control signals over the same isochronous communication pipe teaches including a control communication with data messages as recited by independent claim 1 since a control communication is sent over the data pipe while a stream of data messages is also sent. Applicant's argument that Smyers transmits data on one channel and control communications on a different channel is irrelevant since the claims do not require or recite transmitting on a single channel.

Applicant's argument that Smyers does not show or suggest issuing real-time data communication by means of an isochronous data communication, issuing a second control communication included in said isochronous data communication as recited by claim 7 is not persuasive. This claim uses "means" terminology requiring the specification to be illustrative in what the claim embodies. The specification explicitly states that the preferred structure for sending a communication is IEEE 1394 (pg. 8). This is the same structure that is described by Smyers (paragraph 23). The specification does not recite any other means for sending a communication thus the only embodiment this claim covers is one which uses an IEEE 1394 bus which is disclosed by Smyers. Since the reference and the present claim are using the same

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bus structure, the Examiner fails to see why the present claim is not anticipated in its current form. Applicant argues that Smyers sends control and data over separate channels and thus does not anticipate the claim however the claim does not require separate channels. It merely says a control communication is included in a data communication which is disclosed by Smyers as simultaneously sending control and data over the same data pipe that is used by the claim (IEEE 1394).

Even if the means language is found to not limit the scope of the claim the argument is not persuasive for the same reasons discussed above in claim 1.

### **35 USC 103**

Applicant argues that Fergusson does not show or suggest the features of claims 1 and 7. This is not in dispute as Fergusson was relied upon in the rejection of claims 3 and 10 and was not used to reject the independent claims.

Applicant argues that Riddle does not show or suggest the features of claims 1 and 7. This is not in dispute as Riddle was relied upon in the rejection of claim 5 and was not used to reject the independent claims.

### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner, Art Unit 2442

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Supervisory Patent Examiner, Art Unit 2442

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